IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 127 OF 2007
WITH
CIVIL APPLICATION NO. 335 OF 2007
IN
S.A. NO. 127/2007

1. Tanaji Dada Ballal & Ors. .. Appellants. (Ori.Defendants)

V/s.

1. Vishnu Dagadu Ballal & Ors. .. Respondents. (Org.Plaintiffs)

Mr.Uday P. Warunjikar for the Appellants.

Mr.Rahul S. Kate for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : 10TH SEPTEMBER, 2007.

P.C. :-

. This second appeal is against the concurrent findings of both the courts below that the suit properties were ancestral properties and therefore the plaintiffs are entitled to partition.

2. The plaintiffs claimed that they were members of a Hindu undivided family. It has been established that by evidence Dagadu was their father and the two properties in question belong to Dagadu and his brother Shripati. The defendants- appellants are the nephews of

Shripati. The two properties in question are gat no. 414 and gut no. 454. Gat No.414 is admittedly of a joint character and gat no. 454 is purchased by the defendants grandfather Shripati on 10.01.1931 in his own name. The courts below have come to the conclusion that the gat no.414 is clearly a joint family property belonging to Dagadu and Shripati, who are brothers. The appellants had disputed the joint status of gat no. 454 since the said property was admittedly purchased in the name of their grand-father Shripati. They went to the extent of denying the relationship with Dagadu. The courts below have negatived this plea.

3. Before one considers the correctness or otherwise of the findings of the courts below, it is necessary to state the law on the point. The law laid down by the Supreme Court as early as in the year 1954 is settled law on the subject. In **Srinivas Krishnarao Kango vs. Narayan Devji Kango and Ors. , reported in** A**IR 1954 Supreme Court 379,** the Supreme Court observed as follows :

> "Proof of the existence of a joint family does not lead to presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item

> of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self acquisition."

4. The subsequent decisions also follow the same statement of law.

5. Now from the facts of this case, it is clearly established that one of the properties i.e. Gat no. 414 is a joint family property. This clearly establishes the nucleus of the joint family property. The nucleus having been established, the burden shifted on the party alleging the acquisition in question by the appellants. However, they have failed to discharge that burden. There is no evidence on record to show that the appellants grand-father Shripati had an independent source of income and purchased the property from that income. The courts below have therefore, rightly concluded that there being a joint family with a nucleus, the property in question i.e. gat no.454 purchased by the appellants grand-father Shripati on

10.01.1931 in his own name, was also joint family property.

6. Mr.Warunjikar, the learned counsel for the appellants strenuously contended that the courts below have committed an error in recording a finding that Dagadu and Shripati were brothers. This submission is made in support of the appellants' stand that there was no relationship either between Dagadu and Shripati. I find from the judgement of the lower appellate court that the findings have been recorded, interalia, on the basis of a marriage invitation card in the family which shows both sides of the family. It was contended by Shri Warunjikar that there is no proof that there is a custom among Hindus to state the names of relatives on the marriage invitation cards. This submission does not appear to be wholly correct. That there is a custom is well known. However, in this case it appears that existence of the custom was not specifically raised as an issue. Therefore, the courts below have not committed any substantial error of law in accepting the existence of the custom. That apart, Shri Kate, the learned counsel for the respondents points out that the findings pertaining to the relationship of Dagadu and Shripati are not based merely on the wedding invitation card. The learned counsel referred to the admission

recorded by the appellate court in paragraph 19 of the judgment that the appellants had not denied the relationship. They admitted the fact that they were cousin nephews, but denied that they were ‘real’ cousin nephews. It nonetheless means that the relationship is admitted.

7. In the circumstances, the appeal does not raise any substantial question of law and it is hereby dismissed. The civil application also does not survive. Disposed of accordingly.

(S.A.BOBDE,J.)

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